IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34181

STATE OF IDAHO,	)	**2008 Unpublished Opinion No. 615**
	)	
Plaintiff-Respondent,	)	**Filed: August 25, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
ROBERT DAVID MARRS,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Order denying motion to suppress evidence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Thomas Tharp, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Robert David Marrs appeals from the district court's order denying his motion to suppress evidence.

I.
BACKGROUND

Marrs was charged with possession of methamphetamine and possession of drug paraphernalia. He filed a motion to suppress evidence and to dismiss the charges, arguing that the methamphetamine and paraphernalia were found as a result of an unlawful seizure in violation of his Fourth Amendment rights.

Evidence presented at the hearing on the suppression motion showed the following. On September 6, 2005, four members of the Idaho State Police drug interdiction team were eating dinner when they observed a beat-up pickup truck pull into a nearby gas station. A female passenger got out of the truck, and the officers noticed that her behavior was consistent with

someone under the influence of methamphetamine. The officers decided to question both the woman and the pickup's male driver about possible drug use. Two officers contacted the driver, Marrs, while the other two officers contacted the female, who had gone inside the gas station.

The officers approaching Marrs noticed that the pickup's windshield was shattered and its license plates were almost five years expired. The officers questioned Marrs about these concerns regarding the pickup, asked him for identification, and asked for permission to search the vehicle. Marrs granted the officers permission to search his truck and they did so, finding nothing incriminating. The officers did not take Marrs's keys or retain his identification.

Meanwhile, Marrs's passenger, Tanya Holland, told the officers that she and Marrs had used methamphetamine approximately four hours earlier, that she had snort tubes in her purse which was in the truck, and that Marrs still had methamphetamine on his person. While the initial search of Marrs's pickup pursuant to his consent was still underway, an officer retrieved the snort tubes from Holland's purse and then told Marrs that the officer needed to take the methamphetamine that Marrs possessed. Marrs denied having methamphetamine, but Holland, who was within earshot, told him that she had already informed the officers that he was carrying the drug. At this point, Marrs emptied his pocket and set a small baggie containing 0.06 grams of methamphetamine on the hood of the truck. The officers then ordered Marrs to sit down.

At the hearing on the suppression motion, Marrs testified that before asking his consent to search the pickup, the officers threatened to arrest him or call in a drug dog, and prior to Holland's confession, told Marrs that they had been watching him all day and knew that he had a big shipment of drugs coming in. However, the district court did not find Marrs's testimony to be credible.

The district court denied Marrs's suppression motion, on the ground that the officers' actions were "reasonable." Marrs thereafter entered into a conditional guilty plea to possession of methamphetamine, and the possession of paraphernalia charge was dismissed. Marrs reserved his right to appeal the court's suppression ruling. Marrs was sentenced to a unified term of seven years, with three years determinate. The sentence was suspended, however, and Marrs was placed on probation for five years. Marrs now appeals the denial of his suppression motion.

II.
DISCUSSION

When a decision on a motion to suppress is challenged on appeal, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). The power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

The Fourth Amendment to the United States Constitution guarantees the right of every citizen to be free from unreasonable searches and seizures. A warrantless search or seizure will generally be deemed unreasonable unless it falls within certain well-delineated exceptions to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Zapata-Reyes*, 144 Idaho 703, 706, 169 P.3d 291, 294 (Ct. App. 2007); *State v. Ferreira*, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999). One such exception applies to brief investigative detentions that are based on reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1 (1968). An investigative detention is justified if it is based upon specific articulable facts giving rise to reasonable suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Id.* at 21; *State v. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003); *State v. Holler*, 136 Idaho 287, 291, 32 P.3d 679, 683 (Ct. App. 2001).

Not all encounters between police and citizens are seizures, however. *Terry*, 392 U.S. at 19 n.16; *State v. Keene*, 144 Idaho 915, 918, 174 P.3d 885, 888 (Ct. App. 2007). In order to effectuate a seizure that implicates the Fourth Amendment, an officer must restrain a citizen's liberty by means of physical force or show of authority. *Terry*, 392 U.S. at 19 n.16; *State v. Cardenas*, 143 Idaho 903, 906, 155 P.3d 704, 707 (Ct. App. 2006). If physical restraint was not used, the test is whether the circumstances of the encounter between the officer and the citizen are "so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded." *I.N.S. v. Delgado*, 466 U.S. 210, 216 (1984). Absent such a scenario, the constitutional prohibition against unreasonable seizure is not implicated. *Keene*, 144 Idaho at 918, 174 P.3d at 888 (citing *Florida v. Royer*, 460 U.S. 491, 498 (1983)). Thus, a seizure does not occur "simply because a police officer approaches an individual on the

street or other public place, asks if the individual is willing to answer some questions or puts forth questions if the individual is willing to listen." *Id.* (citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Royer*, 460 U.S. at 497). Any such encounter is deemed consensual so long as police "do not convey a message that compliance with a request is required." *Cardenas*, 143 Idaho at 907, 155 P.3d at 708 (citing *State v. Fry*, 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct. App. 1991)). The fact that most citizens respond to police requests does not eliminate the consensual nature of their response. *Id.*; *State v. Nelson*, 134 Idaho 675, 679, 8 P.3d 670, 674 (Ct. App. 2000).

Marrs argues that he was illegally seized when the officers asked him for identification and for consent to search his pickup. He contends that this seizure cannot be justified by Holland's erratic behavior because the reasonable, articulable suspicion required for a *Terry* stop must be individualized to the person seized.

We conclude that no detention occurred before police asked Marrs for the methamphetamine in his pocket. On the facts found by the district court, Marrs's interaction with the police--at least until the officer's demand for the methamphetamine--was consensual and thus did not implicate constitutional protections against unreasonable seizure. The officers approached Marrs in a public parking lot and questioned him in a "friendly" and "casual" manner. The officers never took Marrs's truck keys into their possession or otherwise stopped Marrs from leaving the scene. They never brandished their weapons, which were concealed under their plain clothes attire. While the officers did question Marrs generally during this preliminary period about his possible possession of methamphetamine, it was not done in a way that conveyed a message that Marrs must cooperate. Though Marrs testified that the officers were accusatory and threatened to bring in a drug dog to inspect Marrs's truck if he did not cooperate, there is substantial evidence in the record to support the trial court's finding that Marrs's testimony was not credible. Given the district court's rejection of Marrs's testimony, the evidence does not demonstrate that the officers engaged in any show of authority or physical restraint that would constitute a seizure of Marrs anytime prior to their request or instruction that he hand over the methamphetamine that he was carrying.

Assuming *arguendo* that an investigatory detention occurred when the officers told Marrs they wanted the methamphetamine in his pocket, reasonable suspicion existed to support it. Reasonable suspicion may be created through information provided by other individuals. *State*

v. Hankey, 134 Idaho 844, 847-48, 11 P.3d 40, 43-44 (2000); *State v. Larson*, 135 Idaho 99, 101, 15 P.3d 334, 336 (Ct. App. 2000). Here, Holland, who was visibly under the influence of methamphetamine, had told the officers that she and Marrs had taken methamphetamine earlier in the day and that Marrs still had methamphetamine in his pocket. These specific articulable facts gave the officers reasonable suspicion that Marrs was holding methamphetamine. Thus, when one officer said he wanted Marrs to give him the methamphetamine, any resulting detention was justified.

On the evidence presented, there was no error in the district court's denial of Marrs's suppression motion. Therefore, the order denying the motion is affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**